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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/824,150

04/14/2004

Riccardo Mares

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6378

22852

7590

06/01/2007

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
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EXAMINER

LOPEZ, FRANK D

ART UNIT

PAPER NUMBER

3745

MAIL DATE

DELIVERY MODE

06/01/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/824,150	<b>Applicant(s)</b> MARES, RICCARDO	
	<b>Examiner</b> F. Daniel Lopez	<b>Art Unit</b> 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on 28 February 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) 1-9 and 11-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-9 and 11-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Amendment***

Applicant's arguments filed February 28, 2007, have been fully considered but they are not deemed to be persuasive.

Applicant's arguments with respect to claims 1-9, 11-26 and 33 have been considered but are deemed to be moot in view of the new grounds of rejection. The new grounds of rejection are necessitated by the added limitations concerning the mode of operation (e.g. claim 1 line 8-9).

Applicant argues that claims 1 and 33 have been amended, to overcome the 101 rejection. The limitation added to claims 1 and 33, are confusing and appear redundant of other limitations in these claims, as discussed in the 112 rejection, and therefore do not overcome the 101 rejection.

Applicant appears to argue that the office action failed to delineate what elements meet the limitations of the claims rejected over prior art, under 102. The 102 rejection indicated that a discussion was "below", meaning that the 103 rejection discussed these limitations. The examiner apologizes for any misunderstanding, and urges the applicant to read the 103 rejection for the limitations of the claims rejected under 102, by German 4405472.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 112***

Claims 1-9, 11-26 and 33 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 8-9 "actuatable hydraulic control having at least one control output associated with a mode of operation of the hydrostatic transmission" is confusing. It would appear that the first and second control pressures (line 7) are control outputs

associated with a mode of operation, and so this added limitation would appear to be redundant. Is applicant trying to claim a third output? Claim 33 last two lines claim a similar limitation, which is confusing for the same reason.

In claim 17 line 3 "the distributor pilot line" is confusing, since there is only a "first pilot line" of the directional on-off valve (claim 11 line 2).

Claims not specifically mentioned are indefinite, since they depend from one of the above claims.

### ***Claim Rejections - 35 USC § 101***

Claims 2 and 3; and 33 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 4; and 34, respectively of U.S. Patent No.7,003,948.

### ***Claim Rejections - 35 USC § 102***

Claims 1, 5-7 and 27-29 are rejected under 35 U.S.C. § 102(b) as being anticipated by German 4405472 (see discussion below).

### ***Claim Rejections - 35 USC § 103***

Claims 2 and 30 are rejected under 35 U.S.C. § 103 as being unpatentable over German 4405472 in view of Campbell et al, Holdeman et al and Malm et al. German 4405472 discloses a hydraulic transmission system and method of controlling the system comprising a variable flow supply means (400, fig 3) connected in a closed circuit with a motor (18, fig 2), by two working lines; a distributor (414, fig 3) connected to a hydraulic adjustment device (420, fig 3) for adjusting the variable flow rate of the supply means; the distributor having a control position which directs hydraulic control fluid (in 403, 405, via 402, fig 3), from a hydraulic adjustment device (see e.g. fig 12), to the adjustment device upon actuation and having a neutral position in which it connects the adjustment device to a tank (via either 412 or 402); but does not disclose two hydraulic users connected to the two working lines by a second connection control, responsive to a control signal to selectively provide serial or parallel connection of the two users; wherein the control signal is indicative of a desired flow rate.

Holdeman et al teaches, for a hydraulic transmission system and method of controlling the system comprising a variable flow supply means (e.g. 35, fig 1) connected in an open circuit with a motor (56, 62, fig 2), by two working lines (42, 70); that there are two hydraulic users connected to the two working lines by a second connection control (98, 100, fig 2), responsive to a control signal (transmission input signal) to selectively provide serial or parallel connection of the two users; wherein the control signal is indicate of a desired flow rate (e.g. column 5 line 1-5).

Campbell et al teaches, for a hydraulic transmission system and method of controlling the system comprising a variable flow supply means (70, fig 2) connected via two working lines (120, 114), to two hydraulic users (13a, 13b), by a second connection control (71, fig 2), to selectively provide serial or parallel connection of the two users; that the system is a closed system.

Malm et al teaches, for a hydraulic transmission system and method of controlling the system comprising a variable flow supply means (30) connected via two working lines (52, 184), to two hydraulic users (13a, 13b), by a second connection control (190, fig 2), to selectively provide serial or parallel connection of the two users; that the purpose of the second connection is to provide a lower flow rate for a given speed in the series connection and a higher output torque for the parallel connection (e.g. column 2 line 1-6).

Since the system of German 4405472 is a closed circuit system, since Campbell et al teaches that a series/parallel connection for two motors can be used in a closed circuit; and since Malm et al teaches the purpose of a series/parallel connection for two motors; it would have been obvious at the time the invention was made to one having ordinary skill in the art to connect the two working lines of German 4405472 to two hydraulic users by a second connection control, responsive to a control signal, to selectively provide serial or parallel connection of the two users; wherein the control signal is indicate of a desired flow rate, as taught by Campbell et al and Holdeman et al, for the purpose of providing a lower flow rate for a given speed in the series connection and a higher output torque for the parallel connection, as taught by Malm et al.

**Conclusion**

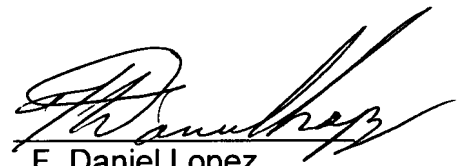
Claims 4, 8, 9, 11-26, 31 and 32 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:00 AM -4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.

  
F. Daniel Lopez  
Primary Examiner  
Art Unit 3745  
May 18, 2007